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Supreme Court, U.S.
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No. 04-883

In The

Supreme Court of the United States

GARY McDOWELL and ROSELEA McDOWELL,
Petitioners,
v.

PROVIDENCE HEALTH CARE PLAN,
an Oregon non-profit corporation,
Respondent.

On Petition for a Writ of *Certiorari* To The
United States Court of Appeals
for the Ninth Circuit

SUPPLEMENTAL AUTHORITY

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SUPPLEMENTAL AUTHORITY

On March 16, 2005, the Third Circuit decided the case of *Levine v. United Healthcare Corporation*, _____F3d_____, 2005 WL 602436 , 2005 U.S. App. LEXIS 4318 (3rd Cir. 2005). In that case, interlocutory cross-appeals were filed concerning, *interalia*, the issue of ERISA preemption. ERISA health plan beneficiaries brought actions in state court against the ERISA insurers on theories of unjust enrichment to recover amounts the beneficiaries paid from third-party tort recoveries pursuant to reimbursement and subrogation clauses in the health plan. The insurers removed the actions to federal, and the beneficiaries moved to remand. The plan beneficiaries sued the insurers in state court after the Supreme Court of New Jersey held that the clauses in the health plan were in valid under a New Jersey state statute. The beneficiaries sought to remand the case back to state court. The district court denied the beneficiaries' motions. The insurers moved to dismiss the beneficiaries' claims, contending the New Jersey statute was preempted by ERISA. The district court denied the insurers' motions to dismiss.

On appeal, the Third Circuit held that the beneficiaries' state claims for unjust enrichment were within the scope of § 502(a) of ERISA [49 U.S.C. §1132(a)] because they were claims to recover benefits due under the terms of the plan, or to enforce rights under the plan, or to clarify rights under the plan. Opinion, p. 3. In so deciding, the Third Circuit relied on two cases decided in other circuits, namely *Arana v. Ochsner Health Plan*, 338 F3d 433 (5th Cir. 2003) [1] and *Singh*

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[1] In *Arana*, the Fifth Circuit held that federal jurisdiction was proper where plaintiff plan beneficiary filed an action in state court seeking a declaratory judgment that his health insurer had no right to reimbursement of health benefits from plaintiff plan beneficiary's third-party tort recovery. Plaintiff plan beneficiary claimed that Louisiana state law invalidated a the plan's reimbursement provision. Defendant health insurer removed the case to federal court. The panel which initially decided the appeal held that district court did not have subject matter jurisdiction, and directed the district court to remand plaintiff's claims to state court. The Fifth Circuit

v. Prudential Health Care Plan Incorporated, 335 F3d 278 (4th Cir. 2003). [2] The Third Circuit held that the beneficiaries' claims were claims to recover benefits wrongly paid to and received by defendant health insurers. The Third Circuit Stated:

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granted the petition for rehearing *en banc*. The Fifth Circuit *en banc* held that the declaratory judgment action was completly preempted by ERISA because the plaintiff plan beneficiary's claim for declaratory relief (requiring the insurer to release its claim of lien and withdraw its reimbursement claim was in essence a claim to enforce his rights under the plan as modified by Louisiana state law, and the claim was therefore completely preempted. 338 F3d at 437-440.

[2]In *Singh*, the Fourth Circuit also addressed a plan beneficiary's claims filed in state court for unjust enrichment and negligent misrepresentation to recover amounts paid to the insurer under plan reimbursement and subrogation clauses. Plaintiff plan beneficiary contended that the plan clauses were invalid and unenforceable under state law. Defendant health insurer removed plaintiff's claims to federal court. The district court denied plaintiff's motion to remand. On appeal, the Fourth Circuit held removal was appropriate because subject matter jurisdiction should not be affected by "the fortuity of *when* a plan term was misapplied to diminish the benefit" 335 F3d at 291 (emphasis in original). The Fourth Circuit held:

> "Singh's claim to recover the portion of her benefit that was diminished by her payment to Prudential under the unlawful subrogation term of the plan is no less a claim for recovery of a plan benefit under § 502(a) than if she were seeking recovery of a plan benefit that was denied in the first instance." 335 F3d at 291 .

Plaintiff's payment to defendant health insurer diminished the benefits to which plaintiff was entitled:

> "Thus, for purposes of complete preemption under § 502(a), a claimant who is denied a benefit is no different than a claimant who is faced with an invoice from the insurer for the return of a benefit paid or a claimant who has paid such an invoice, because resolution in each case requires a court to determine entitlement to a benefit *under the lawfully applied terms* of an ERISA plan." 335 F3d at 291 (emphasis in original).

The Fourth Circuit also held:

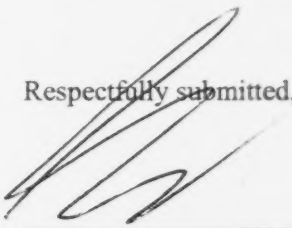
> ". . . that when the validity, interpretation or applicability of *a plan term* governs the participant's entitlement to a benefit or its amount, the claim for such a benefit falls within the scope of § 502(a)." 335 F3d at 291.

> "Thus, [the plan beneficiaries'] claim essentially that they are entitled to have certain health insurance claims paid under their ERISA plans. It is impossible to determine the merits of the [plan beneficiaries'] claims without delving into the provisions of their ERISA-governed plans." Opinion, p. 4.

The Third Circuit concluded that although the beneficiaries attempted to characterize their claims as based only on state law, the essence of the claims concerned an ERISA plan. As a result, the removal was proper. Opinion, p. 5.

Although not relevant to this petition for *certiorari*, the Third Circuit also held that ERISA preempted the New Jersey anti-reimbursement statute, and that it was not saved from preemption as a law regulating insurance. Opinion, pp. 5-7.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2005, I served three copies of the foregoing **SUPPLEMENTAL AUTHORITY** on the following named person(s) on the date indicated below, by

[X] Federal Express.

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